

Town of Milton
115 Federal Street
Milton, DE 19968



www.milton.delaware.gov
Phone: 302-684-4110
Fax: 302-684-8999

ORDINANCE NO. 2021-002

**AN ORDINANCE TO AMEND CHAPTER 220 OF THE TOWN CODE, ENTITLED
“ZONING,” REGARDING THE DISCONTINUANCE OF A NONCONFORMING USE.**

WHEREAS, the Charter of the Town of Milton vests power in the Mayor and Town Council to provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants; and

WHEREAS, the Mayor and Town Council has the power to zone or district the Town and make particular provisions for particular zones or districts with regard to structures, building, and building material, and generally to exercise all powers and authorities vested in the legislative body of cities and incorporated towns under and by virtue of Chapter 3, Title 22 of the Delaware Code; and

WHEREAS, the Town Council of the Town of Milton has previously found it necessary for the aforementioned purposes to enact a zoning ordinance, codified as Chapter 220 of the Town Code; and

WHEREAS, pursuant to Chapter 220, the Town Council of the Town of Milton may, from time to time, on its own motion or on petition or upon recommendation by the Planning and Zoning Commission, amend, supplement or change the boundaries of the districts or the zoning regulations after public notice and hearing; and

WHEREAS, the Town of Milton Planning and Zoning Commission held a duly noticed hearing on February 16, 2021 and voted 7-0 in the Advisory Report received by Town Council; and

WHEREAS, The Town Council held a public hearing on April 5, 2021, as scheduled by prior resolution, with proper notice by publication as required by Town Code Section 220-101A; and

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the Town Council of the Town of Milton, a majority thereof concurring, that the following revisions hereby by incorporated into Chapter 220 of the Town Code, entitled “Zoning,” in Section 220-72, entitled “Discontinuance of nonconforming use,” with deletions shown by strike-through and additions shown by underline:

Chapter 220. Zoning

Article IX. Nonconforming Buildings, Uses and Lots

§ 220-72. Discontinuance of nonconforming use.

A. Any building or land which is used for or occupied by a nonconforming use and which is changed to or replaced by a conforming use, shall not thereafter be used for or occupied by a nonconforming use.

B. When a nonconforming use has been discontinued for a period of one year, it shall be deemed abandoned, regardless of intent or lack thereof, and shall not thereafter be reestablished, and the future use shall be in conformity with the provisions of this chapter.

BE IT FURTHER ORDAINED, that this Ordinance shall take effect upon its enactment.

I, THEODORE J. KANAKOS, Mayor of the Town of Milton, hereby certify that the foregoing is a true and correct copy of the Ordinance adopted by the Town Council of the Town of Milton at its meeting held on the ____ day of _____, **2021**, following a duly noticed public hearing, at which a quorum was present and voting throughout and that the same is still in full force and effect.

MAYOR

SYNOPSIS

This ordinance amends the Town Code's zoning ordinance regarding when a nonconforming use (colloquially called a "grandfathered" use) is considered abandoned and, thus, prohibited from reestablishment. Specifically, the ordinance clarifies that deeming the use abandoned after it has been discontinued for a year or more does not factor in any intent (or lack thereof). By way of example, if a commercial use is a preexisting nonconforming use in a residential district and that commercial use ceases operation for a year, that use cannot be reestablished, regardless of whether the owner, tenant, or any other person intended to abandon the commercial use. The structure would then need to be used in conformity with the uses available in its residential district.